

## **8 - 1    FEDERAL OR STATE OWNERSHIP FOR PERPETUAL CARE PERIOD**

**ISSUE:**            **Legislation is needed to establish State ownership, if there is no Federal ownership, of a commercial radioactive waste facility following the 100-year post-closure period. State or Federal ownership following the 100-year post-closure period of the pending Envirocare Class B and C waste facility site is a condition that must be met prior to licensure of the facility.**

### **RECOMMENDATION:**

The Radiation Control Act, Utah Code, Section 19-3-114, should be amended to include the following provisions:

#### Property ownership

- (1) The state may assume ownership, for purposes of perpetual care, of a closed commercial radioactive waste facility at the end of 100 years after the date of final closure of the facility, unless the federal government has taken ownership of the facility.
- (2) If the state intends to take ownership of the facility, the Governor shall provide written notice of the State's intent to the owner at least one year prior to the end of 100 years after the date of final closure of the facility.
- (3) The state may also assume ownership, for purposes of perpetual care, of a closed commercial radioactive waste facility prior to the end of 100 years after the date of final closure of the facility, if the owner of the facility discontinues post-closure care for any reason and there is no responsible party can be determined that will continue post-closure care until the 100-year period has transpired.
- (4) (a) If the United States Department of Energy or another federal agency takes ownership of the facility, the funds in the Low Level Radioactive Waste Surveillance and Maintenance Fund, established under Section 19-3-114, may be appropriated by the Legislature for the use of the federal agency taking ownership of the facility for the purpose of providing perpetual care of the site.  
(b) If the State takes ownership of the facility, the funds in the Low Level Radioactive Waste Surveillance and Maintenance Fund established under Section 19-3-114 shall be appropriated to fund the costs incurred by the state for perpetual care of the facility following post-closure.

### **BACKGROUND:**

State rule (R313-25-9(2)) and Federal regulation (10 CFR 61.6) require an applicant for a license for a new commercial radioactive waste facility to provide evidence, if the proposed disposal site is on land not owned by the federal or a state government, that arrangements have been made for assumption of ownership in fee by the Federal or State government. When Envirocare was originally licensed, an exemption was granted under provisions of R313-12-55. Subsequently, Envirocare provided additional assurance that private ownership was equivalent to immediate or future state or federal ownership. When Envirocare applied for another land ownership rule exemption as a result of a new application process for Class B and C low-level radioactive waste, Envirocare was

granted a conditional approval by the Utah Radiation Control Board. One of the conditions of the approval was "that the motion (for the exemption approval) be contingent on approval by the Utah Legislature of legislation providing authority for the State of Utah to take ownership of the site and provide funding for perpetual care of the site after 100 years. The precise wording of the legislation and any other requirements that the Legislature may want to include would be at their discretion." (See Radiation Control Board minutes, January 19, 2001, for a detailed discussion of the decision-making regarding the land ownership issue.) As a result, the license to receive B and C low-level radioactive waste is effective only upon satisfaction of conditions established by the Utah Radiation Control Board at the January 19, 2001, meeting including:

"Passage of legislation by the Utah Legislature providing authority for the State of Utah to take ownership of the site 100 years following closure."

Therefore, in addition to approval by the Legislature and the Governor, for the Class B and C license to be effective, federal or state ownership for purposes of perpetual care must be established.